

LS 5-2670a

OGC Has Reviewed

20 February 1956

MEMORANDUM FOR: Special Support Assistant to the
Deputy Director (Support)

SUBJECT :

[REDACTED]

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1. We are returning the NEA memorandum of 29 November 1955 on this subject. In considering the case, we feel it necessary to keep in mind that he is a contract agent and must be viewed as an independent contractor paid on a fee basis. That fee may or may not be computed on the basis of the same elements that make up the compensation available to employees such as salary, quarters allowances, cost-of-living allowances, and others. In legal concept, however, any such items which are used in computing the fee are for computation purposes only and the resulting fee is a single, indivisible payment for service rendered. If certain considerations such as living costs were considered in negotiating the fee, an error in the computation would not normally be grounds for amending the agreed on contractual fee. If there were a mutual mistake by both parties in which a material item had been overlooked in negotiating the contract figure, there might be room for revision of the contract based on that mutual mistake. Here, however, payment by [REDACTED] of quarters cost in excess of the amount stipulated in the contract which made up a part of the total fee appears to be not a matter subject to readjustment by contract amendment.

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2. On the other hand, since the elements to be considered in any negotiation of the fee are merely for purposes of computation, they are in no way binding on the parties as to future negotiations. Therefore, there would be no legal objection to the amendment of a current or future contract to include an additional amount measured by the amount claimed in the attached memorandum. It is also true that this Office would not have a legal objection to a decision that [REDACTED] be paid an additional sum based on an operational determination of either a job well done, incentive for future activity, or as a measure of additional personal control over the agent. These decisions cannot be made by the support elements of the Agency but are operational

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in nature and should be made within the operational elements.
The person or Staff within the DD/P component authorized to negotiate
[redacted] original contract and to negotiate future contracts is
the appropriate authority to make these decisions.

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(s)
[redacted]
Deputy General Counsel

Attachment

OGC/JST:mks (17 February 1977)

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